GIBSON, DUNN & CRUTCHER LLP
KRISTIN A. LINSLEY, SBN 154148
klinsley@gibsondunn.com
MATTHEW S. KAHN, SBN 261679
mkahn@gibsondunn.com
555 Mission Street, Suite 3000
San Francisco, CA 94105-0921
Telephone: 415.393.8200
Facsimile: 415.393.8306

Attorneys for Defendant salesforce.com, inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

DOES #1 through #90, sex trafficking survivors,

Plaintiffs,

v.

SALESFORCE.COM, INC.,

Defendant.

CASE NO. CGC-19-574770

REPLY MEMORANDUM OF DEFENDANT SALESFORCE.COM, INC. IN SUPPORT OF DEMURRER TO SECOND AMENDED COMPLAINT

Department: 302

Date: September 23, 2019
Time: 9:30 a.m.
Reservation No.: 08200923-06

Action Filed: March 25, 2019
Trial Date: Not Set

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I. INTRODUCTION

The Opposition confirms that Plaintiffs' claims fail as a matter of law. There is no legal basis for the notion that a company like Salesforce—which provides business-to-business software products to tens of thousands of companies—should be liable to individuals who might be adversely affected downstream by practices engaged in by one of its customers. Plaintiffs' vague suggestion that Salesforce "conspired" with Backpage.com by providing a customer relationship management software subscription to a Backpage.com affiliate, Website Technologies LLC, and Plaintiffs' unadorned assertion that Salesforce caused them to be "swept into sex trafficking" because Backpage allegedly used that software in its business, cannot cure this fundamental problem. If Salesforce could be liable here, so would every business-to-business provider that sold business products to Backpage or a company like it. That is not the law.

As an initial matter, all of Plaintiffs' claims are barred by Section 230 of the Communications Decency Act under an unbroken line of federal and state cases that only continues to grow. (See, e.g., *Dyroff v. Ultimate Software Group, Inc.* (9th Cir. Aug. 20, 2019) __F.3d__, 2019 WL 3926107, at *4.) Plaintiffs do not seriously dispute that their claims fall within Section 230 as interpreted by this vast body of cases. They offer two responses, neither of which has merit. First, they argue that all of these cases are wrong, and that Section 230 should be limited to defamation claims—a result that would directly contradict the text of Section 230 and the holdings of every court to address the issue, including the California Supreme Court and nearly every federal circuit. Next, they assert that 2018 amendments to Section 230, known as FOSTA, should be read to eliminate immunity for all claims relating to sex trafficking. But FOSTA confirms that Section 230 applies to Plaintiffs' claims. In FOSTA, Congress created three express exceptions to Section 230 for three specific types of sex trafficking actions—it exempted (1) ***private federal civil actions by victims*** under a federal cause of action; (2) ***state criminal prosecutions*** alleging conduct that tracks the new federal definitions; and (3) ***state attorney general enforcement actions***. Congress did not exempt private state civil actions from Section 230, and in fact it ***considered and rejected*** a version of FOSTA that would have done so.

Even apart from Section 230, Plaintiffs have not pled any viable claim against Salesforce. Plaintiffs cannot allege a violation of the California Trafficking Victims Protection Act ("CTVPA") because they do not and cannot allege that Salesforce intended to engage in any type of sex trafficking, much less that it deprived any person of her personal liberty. Nor can Plaintiffs allege a negligence claim. The facts they allege make

clear that Salesforce was not the proximate cause (or even the "but for" cause) of Plaintiffs' injuries, and that Salesforce had no legal duty to individuals with whom it had no direct or indirect contact but who allegedly were injured by third-party criminals who used a website operated by an affiliate of one of Salesforce's customers. Salesforce's demurrer should be sustained without leave to amend.

II. ARGUMENT

A. Section 230 of the Communications Decency Act Bars All of Plaintiffs' Claims

1. FOSTA Confirms that Section 230 Immunity Applies to State-Law Civil Claims

Plaintiffs' principal argument in opposing Salesforce's demurrer is that Section 230 does not apply because the 2018 amendments to the statute—known as the Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Pub. L. No. 115-164, 132 Stat. 1253 (2018), or FOSTA—"were enacted to ensure that courts would no longer rule that claims like Jane Does' were barred by Section 230." (Opp. 2.) But FOSTA actually confirms that Section 230 continues to bar private civil actions under state law.

a. FOSTA Amended Section 230 in Three Specific Ways, and for Three Specific Purposes, None of Which Affects the Claims Here

Congress enacted the FOSTA amendments to Section 230 in response to three specific concerns that had been raised by state AGs, other state and local groups, and victims' advocates, among others. As discussed below, two key concerns related to state criminal prosecutions and state and local government enforcements actions, and the third concern involved the need to provide compensation for victims. Congress responded to these concerns with three sets of amendments, including corresponding changes to Section 230. (See *Woodhull Freedom Found. v. United States* (D.D.C. 2018) 334 F.Supp.3d 185.)

First, Congress clarified and expanded the definitions of covered conduct under the federal anti-trafficking statutes and exempted from the scope of Section 230 certain ***state criminal prosecutions*** based on conduct meeting those new federal definitions. (See 18 U.S.C. § 2421A(a)&(b); 47 U.S.C. § 230(e)(5)(B)&(C); *Woodhull*, 334 F.Supp.3d at pp. 190-91.) In this way, Congress directly answered the state AGs' concerns that otherwise criminal conduct was being immunized under Section 230. Second, Congress expressly provided for—and exempted from Section 230—***civil enforcements actions*** by state attorneys general based on certain conduct that would violate the new federal statute, see 18 U.S.C. § 1595(d)—thus allowing state attorneys general to "step into the shoes of victims and bring civil suits on

their behalf." (*Woodhull,* 334 F.Supp.3d at p. 192.) Congress also amended Section 230 to lift immunity with respect to civil enforcement actions. (47 U.S.C. § 230(e)(5)(A).) Finally, to address victims' rights, Congress created an express exemption to Section 230 for a modified and expanded ***federal civil cause of action*** for victims of sex trafficking. (47 U.S.C. § 230(e)(5)(A); *Woodhull*, 334 F.Supp.3d at p. 192).

None of these amendments affected the broad scope of Section 230 as applied to *other* categories of claims, including private civil claims under state law. "'Under the familiar rule of construction, *expressio unius est exclusio alterius*, where exceptions to the general rule are specified by statute, other exceptions are not to be implied or presumed,' absent 'a discernible and contrary legislative intent.'" (*FNB Mortg. Corp. v. Pacific General Group* (1999) 76 Cal.App.4th 1116, 1133, quoting *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 195.) Congress' decision to make only selected changes—for federal civil claims by victims, state criminal enforcement, and state civil enforcement—refutes Plaintiffs' thesis that FOSTA eliminates Section 230 immunity for all claims relating to sex trafficking. (Opp. 2, 5–8.)

Significantly, in enacting FOSTA, Congress *considered and rejected* the very exemption to Section 230 that Plaintiffs try to read into the text here. The original version of FOSTA would have created an exception to Section 230 for private civil claims under state law—in other words, exactly the exemption that Plaintiffs say should apply here. The proposed language in that version read as follows:

> **(5) No effect on civil law relating to sexual exploitation of children or sex trafficking.**
>
> Nothing in this section shall be construed to impair the enforcement or limit the application of-
>
> (A) section 1595 of title 18, United States Code; or
>
> (B) any other Federal ***or State law*** that provides causes of action, restitution, or other civil remedies to victims of-
>
> (i) sexual exploitation of children;
> (ii) sex trafficking of children; or
> (iii) sex trafficking by force, threats of force, fraud, or coercion.

(RJN, Ex. A [H.R. 1865 115th Cong., § 3 (a)(2)(C) (1st Sess. Apr. 3, 2017)], italics added.)[1] The reference to "State law" causes of action and civil remedies to victims was ***not*** included in the final enacted version, which instead created a new federal civil cause of action and exempted it from Section 230. That Congress considered and rejected an exemption for state civil claims such as Plaintiffs assert here makes clear that

[1] Salesforce is concurrently filing a request for judicial notice of the legislative history materials relating to FOSTA that are cited in this brief.

no such exemption was created. "Few principles of statutory construction are more compelling than the proposition that Congress does not intend sub silentio to enact statutory language that it has earlier discarded in favor of other language." (*INS v. Cardoza-Fonseca* (1987) 480 U.S. 421, 442–443; accord *People v. Soto* (2011) 51 Cal.4th 229, 245.)

b. The Legislative History that Plaintiffs Cite Is Consistent with the Limited Scope of the FOSTA Amendments

Despite acknowledging that FOSTA did not "expressly list civil claims for human trafficking under state law" (Opp. 8), Plaintiffs cite the statutory preamble and "Sense of Congress" passages, as well as snippets of legislative history, to argue that FOSTA exempts such claims from Section 230 because FOSTA was meant to "clarify" that Section 230 "was never intended to apply to human trafficking claims." (Opp. 5–8.) Plaintiffs are wrong for multiple reasons.

First, the legislative history of FOSTA is entirely consistent with what Congress did—namely, create specific exemptions to Section 230 for federal civil claims and certain state criminal and civil enforcement actions. In the debates that led to FOSTA, Congress was presented with three specific areas of concern. Two related to state criminal prosecutions and state and local government enforcement actions. In a widely-cited letter from 49 state AGs, Congress was told that courts were applying Section 230 to bar state prosecutions of criminals engaged in facilitating sex trafficking. (See RJN, Ex. B [Ltr. from National Ass'n of Attorneys General (Jul. 23, 2013)]; see also RJN, Ex. C [115 Cong. Rec. H1291 (Feb. 27, 2018)] [statement of Rep. Jackson Lee noting state AGs' concern that broad interpretations of CDA 230 "has left victims and State and local law enforcement agencies and prosecutors … feeling powerless " to combat online trafficking].) The same concerns were raised for state civil enforcement actions, which also had been held barred by Section 230. The state AGs argued that, due to the limited reach of federal prosecutorial efforts in this area, it was essential that Congress amend Section 230 to allow state and local prosecutors "on the front lines" in the battle against sex trafficking to investigate and prosecute those who were facilitating sex trafficking crimes. (RJN, Ex. B at 2.) Finally, Congress was told that trafficking victims lacked any avenue for civil redress for their injuries—both because civil restitution was blocked by the ban on state enforcement actions, and because there was no vehicle for private damages actions. (See, e.g., RJN Ex. C at H1292 [statement of Rep. Jackson Lee]; *id.* at H1293–94 [statement of Rep. Wagner].) Consistent with these concerns, Congress responded with the three

amendments described above—an exemption for state criminal actions, an exemption for civil enforcement actions by state AGs, and the federal civil cause of action for victims with a corresponding exemption from Section 230 immunity.

Second, even if Plaintiffs could find passages in the legislative history that contradict this clear picture of FOSTA's limited effect—and they have pointed to none[2]—legislative history cannot alter the plain statutory text. "[A]ny issue of statutory interpretation" must "begin with the text of the relevant provisions," and if that "text is unambiguous and provides a clear answer, [a court] need go no further." (*Microsoft Corp. v. Franchise Tax Bd*. (2006) 39 Cal.4th 750, 758.) And "prefatory clause[s]" such as Plaintiffs cite here "do[] not change the plain meaning of the operative clause" of the statute. (*Kingdomware Techs., Inc. v. United States* (2016) 136 S.Ct. 1969, 1977–78; see also *Igbonwa v. Facebook, Inc.* (N.D. Cal., Oct. 9, 2018, No. 18-CV-02027-JCS) 2018 WL 4907632, at *7 n. 9 [rejecting argument based upon the "vague language" in the FOSTA preamble].)

2. Section 230 Is Not Limited to Defamation Claims

Plaintiffs do not dispute that the key prerequisites for Section 230 are met here. They do not contest that Salesforce is an "interactive computer service" within the meaning of the statute (see Demurrer 21–22; Opp. 4–8), or that the advertisements by which they claim to have been injured were authored by third parties. Their main argument is that the term "publisher or speaker" in Section 230 should be read narrowly to apply only to defamation claims. (Opp. 4–5.) This argument has been rejected by every court to consider it. As the Court of Appeal made clear in *Doe II v. MySpace Inc.* (2009) 175 Cal.App.4th 561, 568, "[t]he express language of the statute indicates Congress did not intend to limit its grant of immunity to defamation claims." (See also *Barnes v. Yahoo!, Inc.* (9th Cir. 2009) 570 F.3d 1096,

[2] The various legislative snippets Plaintiffs cite are consistent with the text that Congress enacted and certainly do not warrant reading a new, non-textual exemption into Section 230. Plaintiffs cite references to exempting "federal and state civil and criminal" actions from Section 230—but these references faithfully describe the actual exemptions for federal civil, state criminal, and state civil enforcement (federal criminal having already been exempted from Section 230 pre-FOSTA). The two "Sense of Congress" passages (Opp. 6) are "precatory" in nature and "do not in themselves create individual rights or, for that matter, any enforceable law." (*Orkin v. Taylor* (9th Cir. 2007) 487 F.3d 734, 739.) The floor statements from 1995 and 2017 about the general purpose of Section 230 as originally enacted (Opp. 5 n.4, 6) not only have no bearing on how to read the 2018 FOSTA amendments, but are "among the least illuminating forms of legislative history." (*NLRB v. SW General, Inc.* (2017) 137 S.Ct. 929, 943.) And "post-enactment legislative history"—like statements in 2017 about the meaning of Section 230 when it was enacted—is a "contradiction in terms" that is "not a legitimate tool of statutory interpretation." (*Bruesewitz v. Wyeth LLC* (2011) 562 U.S. 223, 242.)

1101 [text of Section 230 "does not limit its application to defamation cases"].) Courts "uniformly recognize" that Section 230 immunizes against "causes of action of all kinds." (*Marshall's Locksmith Service Inc. v. Google, LLC* (D.C. Cir. 2019) 925 F.3d 1263, 1267 & n. 2.) Courts have also invoked Section 230 "in connection with a wide variety of causes of action, including housing discrimination, negligence, and securities fraud and cyberstalking." (*Jane Doe No. 1 v. Backpage.com, LLC* (1st Cir. 2016) 817 F.3d 12, 19, citations omitted.) "[W]hat matters is not the name of the cause of action—defamation versus negligence versus intentional infliction of emotional distress—what matters is whether the cause of action inherently requires the court to treat the defendant as the 'publisher or speaker' of content provided by another." (*Barnes*, 570 F.3d at pp. 1101–02; see also *Hassell v. Bird* (2018) 5 Cal.5th 522, 540.) Plaintiffs seek to hold Salesforce liable for the effects of advertisements posted on Backpage—a classic instance of treating an entity as a "publisher or speaker." (Demurrer 22–23.)

The Ninth Circuit's recent *Dyroff* decision—referenced by this Court in its August 22, 2019 minute order—confirms this conclusion. That case involved a social networking website called the Experience Project where users could anonymously share first-person experiences ranging from "I am going to Stanford" to "I love heroin." (*Dyroff*, 2019 WL 3926107, at *1–2.) The plaintiff's son posted that he was looking for heroin, and received an email notification when a drug dealer posted in the same group. (*Id.* at *2.) He connected with the dealer offline and purchased heroin from him. (*Ibid.*) The heroin was laced with fentanyl and the son died from fentanyl toxicity. (*Ibid.*) The Ninth Circuit held that Section 230 applied because the plaintiff sought to treat the website as the "publisher or speaker." (*Ibid.*) Here, just as the plaintiff in *Dyroff* sought to hold the Experience Project liable for messages posted by drug dealers, Plaintiffs seek to hold Salesforce liable for third-party advertisements that allegedly caused them injury.

Plaintiffs' arguments that all of these cases are inapt because they predate or do not address the FOSTA amendments (Opp. 6)—or, more broadly, because the United States has taken various steps to combat human trafficking since Section 230 was passed (*id.* at 6–7)—are incorrect. As noted, FOSTA did not exempt from Section 230 state civil actions like this one, and the various enforcement initiatives that Plaintiffs cite do not and cannot create unwritten amendment to statutory text.

B. The SAC Does Not Allege a Violation of the California Trafficking Victims Protection Act

A claim under the CTVPA must allege facts establishing the defendant "deprive[d] or violate[d]

the personal liberty of another," and did so with criminal intent. (Penal Code, § 236.1(b).) As Salesforce showed, the SAC alleges no facts to support either element. (Demurrer 13–15.) Plaintiffs do not dispute this point, but claim that Salesforce nonetheless violated the CTVPA because it "maintain[ed]" a violation of one of the criminal statutes referenced under Penal Code Section 236.1(b)—namely, the prohibition in Penal Code Section 266i on pandering. (Opp. 10.) But the SAC does not state a violation of that statute.

Plaintiffs cite Section 266i, subdivision (a)(6), which makes it a crime to "[r]eceive[] or give[], or agree[] to receive or give, any money or thing of value for procuring, or attempting to procure, another person for the purpose of prostitution, or to come into this state or leave this state for the purpose of prostitution." (Penal Code § 266i(a)(6); see Opp. 10.) "[T]he term 'procure' means assisting, inducing, persuading or encouraging" (*People v. Schultz* (1965) 238 Cal.App.2d 804, 812), yet the SAC does not allege that Salesforce had any role in "assisting, inducing, persuading or encouraging" any person for the purpose of prostitution. At most, it alleges that Salesforce provided its customer relationship management software to a company that in turn sold advertising space to unnamed third parties, some of whom violated Section 236.1 (or Section 266i). (SAC ¶¶ 134, 138, 140, 153–56.) The SAC does not allege any direct communications between Salesforce and any persons involved in prostitution. Moreover, "pandering is a specific intent crime" (*People v. Zambia* (2011) 51 Cal.4th 965, 980), yet the SAC nowhere alleges that Salesforce had the specific criminal intent to procure persons for prostitution. Because Plaintiffs cannot plead a violation of Section 266i or any other law, their CTVPA claim fails.[3]

Plaintiffs try to save their claim by noting that Section 236.1 provides that courts should consider the "[t]otal circumstances," such as the age of the victim or "relationship between the victim and the trafficker or agents of the trafficker" as "factors to consider in determining" if there was "duress," "coercion," or "deprivation or violation of liberty." (Opp. 10, citing Penal Code, § 236.1(i).) But the terms "duress" and "coercion" are merely aggravating factors that go to sentencing, not to liability, in the statute. And the listed factors simply suggest that it may be more appropriate to find a violation of the statute if, for instance, a trafficker preyed on particularly young or disabled persons. That has no relevance

[3] Plaintiffs argue for the first time that Penal Code Section 236.1(c) provides additional protections to minors—a category that apparently includes some of the Plaintiffs. (Opp. 10 n.5.) But the SAC fails to allege that Salesforce did or attempted to "cause, induce, or persuade" a minor "to engage in a commercial sex act," much less with the necessary criminal intent. (Penal Code, § 236.1(c).)

here where Salesforce did not participate in the trafficking of any victims, including Plaintiffs.[4]

C. The SAC Does Not State a Claim for Negligence or "Gross Negligence"

Plaintiffs' negligence claim fails as a matter of law because they do not and cannot allege facts that would establish that Salesforce either was the legal or factual cause of Plaintiffs' injury or had a legal duty to Plaintiffs. As Salesforce showed (Demurrer 15–16), Plaintiffs cannot establish a legally cognizable causal link between what Plaintiffs allege Salesforce did—provide a customer relationship management software subscription to a customer—and Plaintiffs' injuries. Multiple California cases have rejected on causation grounds claims where a plaintiff seeks to hold defendants liable for an attack or assault committed by a third party. (*Id.* at 16, citing *Leslie G. v. Perry & Assoc.* (1996) 43 Cal.App.4th 472, 480; *Saelzler v. Adv. Grp. 400* (2001) 25 Cal.4th 763, 775–77.) Plaintiffs say virtually nothing about this critical, fundamental legal defect. (Opp. 12–13.) They simply recite in conclusory fashion, without alleging any facts that would provide any support whatsoever, that Salesforce caused Plaintiffs to be "swept into trafficking" and should have foreseen that trafficking victims would be harmed. (*Id.* at 12.) Such "speculation" and "conjecture" cannot establish legal causation. (*Saelzler*, 25 Cal.4th at p. 775.)

Nola M. v. USC (1993), cited by Plaintiffs (Opp. 12–13), confirms this point. (16 Cal.App.4th 421, 424.) In that case, a woman was attacked in an open area on USC's campus. (*Ibid.*) She sued USC for negligence, arguing that its on-campus security was inadequate. (*Ibid.*) A jury found USC negligent and awarded the plaintiff significant damages. (*Id.* at p. 426.) The Court of Appeal reversed, holding that "USC's failure to deter the attack on Nola was not the cause of her injuries" because "abstract negligence unconnected to an injury will not support liability." (*Id.* at pp. 424, 438.) The Court noted that "[t]o conclude otherwise … would create a form of victim compensation which is not legislatively sanctioned." (*Id.* at p. 438.) As in *Nola M.*, Plaintiffs allege "abstract negligence" against Salesforce—including an alleged failure to monitor its customers' activities or police them downstream to ensure only legal uses of

[4] The non-California plaintiffs lack standing to bring a CTVPA claim because there is no clear textual indication that it reaches beyond California. (Demurrer 14 n.2.) Plaintiffs cite choice-of-law cases suggesting that California sometimes applies its law to out-of-state citizens. (See Opp. 10.) But standing and choice-of-law are distinct inquires—with the former looking to whether California has extended its statutory reach to conduct occurring in other states, and the latter addressing what law governs a particular claim. And as a matter of due process, a state court may not apply its own law to a broad class of plaintiffs—like the non-California plaintiffs here—with no meaningful connection to the forum. (See *Phillips Petr. Co. v. Shutts* (1985) 472 U.S. 797, 815-22.)

its software. (SAC ¶ 186(c)–(d).) And as *Nola M.* teaches, allegations of this generalized sort are insufficient. That is particularly true here, where Plaintiffs' claimed injuries were caused by third-party criminals who had no connection whatsoever to Salesforce. Even if Backpage assisted or encouraged those criminals, Salesforce is *not* Backpage and is not alleged to have owned, operated, or controlled Backpage. Salesforce provided Website Technologies with a subscription to CRM software—just like, presumably, numerous other companies provided Backpage with services and products (such as cell phone service providers, computer manufacturers, and landlords). Plaintiffs' attenuated negligence theory, if accepted, would open the door to liability not just for criminals, and not just for those who assist those criminals, but for a broad range of businesses that are alleged to have provided services to those who provided the assistance.

The doctrine of superseding cause also precludes Plaintiffs' claims. (Demurrer 16–17.) Plaintiffs do not address any of Salesforce's cases on this point, pointing only to the rule that if an actor's negligence is a "substantial factor" in causing an injury, an intervening third-party act does not destroy causation if the act was "reasonably foreseeable." (Opp. 12–13.) But "[a] defendant's conduct is not a substantial factor in bringing about harm if the harm would have resulted even if the defendant had not acted, unless the defendant is a concurrent independent cause." (*San Diego Gas & Elec. Co. v. San Diego Regional Water Quality Control Bd.* (2019) 36 Cal.App.5th 427, 436.) Here, Plaintiffs do not allege that their harm would not have occurred if Salesforce had not acted, nor do they allege that Salesforce was a concurrent independent cause of their injuries. "If the conduct which is claimed to have caused the injury had nothing at all to do with the injuries, it could not be said that the conduct was a factor, let alone a substantial factor, in the production of the injuries." (*Mitchell v. Gonzales* (1991) 54 Cal.3d 1041, 1052.)

Finally, Plaintiffs cannot establish that Salesforce had a legal duty to protect them from the harm caused by third parties. As Salesforce showed (see Demurrer 19–21), it is settled that selling ordinary, non-defective products does not give rise to a legal duty to downstream users of those products, much less to third parties who later claim to have been injured by someone (here, a trafficker) who used the services of a company that in turn purchased the non-defective product (here, Website Technologies). Instead of responding to the cases Salesforce cited on this point, they invoke the unremarkable principle that a person is liable for injuries "caused" by his or her failure to exercise reasonable care. (Opp. 11.) But merely

rehashing the basics of negligence cannot establish that Salesforce owed Plaintiffs—persons who are complete strangers to Salesforce, with whom it is not alleged to have had *any* interactions—any legally enforceable duty. Plaintiffs also claim a "statutory duty" under the CTVPA, citing *Searcy v. Hemet Unified School Dist.* (1986) 177 Cal.App.3d 792 (Opp. 11), but *Searcy* makes clear that "[d]uty cannot be alleged simply by stating 'defendant had a duty under the law'"—precisely what Plaintiffs try to do here. (177 Cal.App.3d at p. 802.) Rather, they must allege "[t]he facts showing the existence of the claimed duty" (*ibid.*)—but Plaintiffs cannot do this because nothing in the CTVPA, which provides only a remedy, imposed on Salesforce any legal duty of care with respect to Plaintiffs based on the facts alleged here.

D. The SAC Does Not Allege a Cause of Action for Civil Conspiracy

The SAC does not assert a cause of action for civil conspiracy. But even if the references to civil conspiracy at various points in the SAC (see ¶¶ 165–73, 179, 186(f)) could be read as an attempt to plead such a claim, those allegations are insufficient. Plaintiffs assert that Salesforce "agreed to provide significant operational support to Backpage in exchange for money" while knowing that Backpage was being used by third parties to promote trafficking. (Opp. 7.) But "actual knowledge of the planned tort, without more, is insufficient to serve as the basis for a conspiracy claim." (*Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1582.) Instead, "knowledge of the planned tort must be combined with intent to aid in its commission." (*Ibid.*) Here, Plaintiffs failed to allege that Salesforce agreed with Backpage to commit wrongdoing with the knowledge *and intent* to aid in human trafficking. That Salesforce provided "operational support" to Backpage is insufficient without more to demonstrate an "agreement to cooperate" in wrongdoing. (*Michael R. v. Jeffrey B.* (1984) 158 Cal.App.3d 1059, 1069.)

E. Leave to Amend Should Be Denied

"It is generally the plaintiff's burden to 'show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading.'" (*Apple Inc. v. Super. Ct.* (2017) 18 Cal.App.5th 222, 258, quoting *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) Plaintiffs have had multiple chances to amend and have failed to make any showing as to how they might amend to fix the defects in their complaint. (See Linsley Decl. ¶¶ 2-9.) Leave to amend should thus be denied.

III. CONCLUSION

The Court should sustain the Demurrer to the SAC without leave to amend.

DATED: September 16, 2019

GIBSON, DUNN & CRUTCHER LLP

By: /s/ *Kristin A. Linsley*
Kristin A. Linsley

Attorneys for Defendant salesforce.com, inc.